IN THE

Supreme Court of the United States

October Term, 1966

No. 216

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

ALLIS-CHALMERS MANUFACTURING COMPANY and INTERNATIONAL UNION, UAW-AFL-CIO (LOCALS 248 and 401).

MOTION FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE*

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This motion is made on behalf of The New York Times Display Advertising Salesmen Steering Committee for leave to file a brief *amicus curiae* in the above-entitled case.

The Intervenor

The New York Times Display Advertising Salesmen Steering Committee is an unincorporated association of some 43 employees of The New York Times. The Committee is wholly independent of any labor organization or any company or management group; the expenses of the Committee are paid by contributions of the individual members.

The Committee was formally organized in January 17, 1966, as a consequence of the extension of the labor contract's union shop provisions to certain members of the group. Prior to the most recent collective bargaining agreement, some but not all of The Times' advertising salesmen were subject to compulsory union membership; to all intents and purposes, the exceptions to compulsory unionism were removed by The Times and the Newspaper Guild in the contract effective March 31, 1965. Since its organization, the Committee has acted on behalf of its members in a number of ways, including the filing of a deauthorization petition with the National Labor Relations Board and the provision of advice and legal counsel to the individual members as to the limits of their compulsory obligations to the Newspaper Guild.

The Committee's Interest in this Proceeding

The Newspaper Guild is now in the process of subjecting some 23 members of the Committee to a trial for the "anti-union offense" of having crossed a Newspaper Guild picket line in 1965.

Under Article XII, Section 3 of the Constitution of the American Newspaper Guild, it is provided that:

> "Upon a verdict of guilty of any charge, the Trial Board may impose a penalty of expulsion; suspension; *fine;* public reprimand or admonishment; special remedial action appropriate to cure the offense; *other penalty appropriate to the offense; or any combination thereof,* and the Trial Board shall determine when any such penalty has been satisfied. Pending satisfaction of a penalty, except expulsion, a penalized member shall be a suspended member as defined in Article X, Section 4 of the ANG Constitution." [Emphasis added.]

Thus, it may be seen that the individual members of the Committee are exposed to financial penalties of *indeterminate amount* and conceivably might be ordered to pay fines amounting to hundreds of dollars each. The Guild Trial Board has already had three hearings for the purpose of imposing these penalties. The Committee has objected from the very outset to these repeated hearings as simply another form of harassment. The representative of the members of the Committee appeared in the Guild proceedings and stated that the individuals involved have no interest in continuing their membership in the Guild.

Neither the intervenors nor the employees in the *Allis-Chalmers* case seek to interfere with the way the respective unions order their internal affairs or control and withdraw rights to membership except insofar as such membership affects job tenure. The individual intervenors have been assured that as long as dues are paid the law does not permit them to lose their jobs for other infractions of union rules. However, the law would certainly seem a ridiculous thing to these men if they were to discover that it protects them from losing $1,000 by being fired or suspended but it does not protect them from losing that same $1,000 by being fined for the precise conduct which has been immunized from other discipline.

Not only have the issues in the Guild trial been narrowed, from the point of view of the individuals affected, to a question of financial loss, but previous actions by the New York Newspaper Guild suggest the result which is certain to obtain in the present matter. In 1963, seven of the same individuals involved in the current Guild trial were arraigned by that union for crossing a picket line set up by the Printers Union. The decision of the Guild in that matter was that these same men "[S]hould be further subjected to a commensurately stiff fine. But in the spirit of leniency and in the hope of better understanding

in the future, the Board suspends the execution of the fine."

The Committee's Unique Position

We respectfully suggest to the Court that the Committee will be able to present a point of view that cannot adequately be offered by any of the parties or other possible intervenors. The Committee in a true sense is speaking with the voice of individuals who will be directly and personally affected by the Court's decision. These individuals have no "institutional" point of view to defend or advance.

In our view the heart of this case lies in the contradiction between compulsory unionism and individual freedom of conscience and action. Compulsory unionism is today *a contractual obligation* imposed upon individuals by agreement between management and labor organizations. Under the law as it now stands, individual employees or even groups of employees within a larger bargaining unit may have absolutely no say over whether *the company and the union* will agree to force them into union membership. Under other forms of union security an employee who has, at first joined voluntarily may be *forced* by *a contract between union and management* to continue his union membership against his will. Employees' freedom from compulsory union membership is an "appropriate subject" of collective bargaining, and when it suits an employer he may bargain away this freedom for some advantage which concerns him.

The complicated and precise legal steps which may be taken by an individual employee to reduce or circumscribe his membership obligations to a union once he is forced to "join" under a management union security provision are generally beyond the knowledge of the individual affected. Certainly, there are no organizations, including the N. L.

R. B., which are devoting either time or money to advising individual employees as to how they may withdraw from a union. It is true that the N. L. R. A. *permits* certain forms of union security; however, that same Act *guarantees* "Employees * * * the right to self organization, to * * * assist labor organizations * * * and * * * the right to refrain from any or all such activities." [Section 7.] It is the limits of that guarantee to the individual employees which the Court will examine in this case.

In this particular case, the Allis-Chalmers Company contends it is an unfair labor practice for the fines in question to be imposed; the company does nothing reprehensible in taking a position which coincides with its own interests. However, the interests which the Act protects are those of the *individual* employees, and we believe it would be most appropriate for the Court to hear directly from a group of them—a group of people who are not concerned with the competitive power balance between institutionalized management and institutionalized labor unions—who are only concerned with their own individual rights, which are, after all, the subject matter of both this case and the Act.

Respectfully submitted,

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Dated: December 19, 1966.